

# HOUSE BILL No. 1632

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 34-30-2-146.5; IC 35-33-5-9; IC 35-42-2-6.

**Synopsis:** Battery by body waste. Allows a law enforcement officer to take a blood sample from a person without the person's consent and without obtaining a search warrant if the law enforcement officer has probable cause to believe that a person has committed battery by body waste and: (1) the law enforcement officer has probable cause to believe that the current state of the person's blood will constitute evidence to determine if the person was infected with hepatitis B, hepatitis C, HIV, or tuberculosis at the time the person committed the offense; (2) the law enforcement officer reasonably believes that an emergency exists in which the time that would be necessary to obtain a search warrant would threaten the loss, alteration, or destruction of the evidence; and (3) the procedures used to extract the blood sample are reasonable and in accordance with accepted medical practices. Makes the offense of battery by body waste: (1) a Class C felony instead of a Class D felony if the person who committed the offense knew or recklessly failed to know that the person was infected with hepatitis C; and (2) a Class B felony instead of a Class D felony if the person who committed the offense knew or recklessly failed to know that the person was infected with hepatitis C and the offense results in the transmission of hepatitis C to another person.

**Effective:** July 1, 2001.

**Welch, Lawson L, Mellinger**

January 17, 2001, read first time and referred to Committee on Courts and Criminal Code.



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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## HOUSE BILL No. 1632

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 34-30-2-146.5 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2001]: **Sec. 146.5. IC 35-33-5-9 (Concerning**  
4 **certain persons involved in cases concerning battery by body**  
5 **waste.)**

6 SECTION 2. IC 35-33-5-9 IS ADDED TO THE INDIANA CODE  
7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
8 1, 2001]: **Sec. 9. (a) If a law enforcement officer has probable cause**  
9 **to believe that a person has committed an offense under**  
10 **IC 35-42-2-6 (battery by body waste), the law enforcement officer**  
11 **may take a blood sample from the person without the person's**  
12 **consent and without obtaining a search warrant if:**

13 (1) **the law enforcement officer has probable cause to believe**  
14 **that the current state of the person's blood will constitute**  
15 **evidence under IC 35-42-2-6 to determine if the person was**  
16 **infected with:**

17 (A) **hepatitis B;**



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- 1 (B) hepatitis C;  
2 (C) HIV; or  
3 (D) tuberculosis;  
4 at the time the person committed the offense under  
5 IC 35-42-2-6;  
6 (2) the law enforcement officer reasonably believes that an  
7 emergency exists in which the time that would be necessary to  
8 obtain a search warrant would threaten the loss, alteration, or  
9 destruction of the evidence; and  
10 (3) the procedures used to extract the blood sample are  
11 reasonable and in accordance with accepted medical  
12 practices.  
13 (b) A physician or a person trained in obtaining blood samples  
14 and acting under the direction of or under a protocol prepared by  
15 a physician shall obtain a blood sample under this section if the  
16 following exist:  
17 (1) A law enforcement officer requests that the sample be  
18 obtained.  
19 (2) The law enforcement officer has certified in writing the  
20 following:  
21 (A) That the officer has probable cause to believe the  
22 person from whom the sample is to be obtained has  
23 violated IC 35-42-2-6.  
24 (B) That the person from whom the sample is to be  
25 obtained has been transported to a hospital or other  
26 medical facility.  
27 (3) Not more than the use of reasonable force is necessary to  
28 obtain the sample.  
29 (c) A physician or a person trained in obtaining blood samples  
30 and acting under the direction of or under a protocol prepared by  
31 a physician, who:  
32 (1) obtains a blood sample from a person; or  
33 (2) performs a test on blood from a person;  
34 under this section shall deliver the sample or disclose the results of  
35 the test to a law enforcement officer who requests the sample or  
36 results as a part of a criminal investigation. Samples and test  
37 results shall be provided to a law enforcement officer even if the  
38 person has not consented to or otherwise authorized their release.  
39 (d) The test results and samples obtained by a law enforcement  
40 officer under this section may be disclosed only to:  
41 (1) the victim of the offense that was committed under  
42 IC 35-42-2-6; and

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(2) a prosecuting attorney or a deputy prosecuting attorney for use as evidence in a criminal proceeding under IC 35-42-2-6.

(e) If the person:

(1) from whom the blood sample is to be obtained under this section does not consent; and

(2) resists the taking of a blood sample;

the law enforcement officer may use reasonable force to assist an individual, who must be authorized under this section to obtain a blood sample, to take the blood sample.

(f) The person authorized under this section to obtain a blood sample shall take the blood sample in a medically accepted manner.

(g) A law enforcement officer may transport the person to a place other than a hospital where the blood sample may be obtained by any of the following persons who are trained in obtaining blood samples and who have been engaged to obtain blood samples under this section:

(1) A physician holding an unlimited license to practice medicine or osteopathy.

(2) A registered nurse.

(3) A licensed practical nurse.

(4) An advanced emergency medical technician (as defined in IC 16-18-2-6).

(5) A paramedic.

(h) A physician, a hospital, or an agent of a physician or hospital is not civilly or criminally liable for any of the following:

(1) Disclosing test results in accordance with this section.

(2) Delivering a blood sample in accordance with this section.

(3) Obtaining a blood sample in accordance with this section.

(4) Disclosing test results to:

(A) the victim of the offense committed under IC 35-42-2-6; or

(B) the prosecuting attorney or the deputy prosecuting attorney for use at the criminal trial of the person.

(5) Testifying at the criminal trial of the person as to facts observed or opinions formed.

(6) Injury to a person arising from the performance of duties in good faith under this section.

(i) For purposes of this section:

(1) the privileges arising from a patient-physician relationship do not apply to the samples, test results, or testimony

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described in this section; and

(2) samples, test results, and testimony may be admitted in a proceeding in accordance with the applicable rules of evidence.

The exceptions to the patient-physician relationship specified in this subsection do not affect those relationships in a proceeding not covered by this section.

SECTION 3. IC 35-42-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. (a) As used in this section, "corrections officer" includes a person employed by:

- (1) the department of correction;
- (2) a law enforcement agency; or
- (3) a county jail.

(b) As used in this section, "human immunodeficiency virus (HIV)" includes acquired immune deficiency syndrome (AIDS) and AIDS related complex.

(c) A person who knowingly or intentionally in a rude, insolent, or angry manner places blood or another body fluid or waste on a law enforcement officer or a corrections officer identified as such and while engaged in the performance of official duties or coerces another person to place blood or another body fluid or waste on the law enforcement officer or corrections officer commits battery by body waste, a Class D felony. However, the offense is:

- (1) a Class C felony if the person knew or recklessly failed to know that the person was infected with:

- (A) hepatitis B;
- (B) **hepatitis C**;
- (C) HIV; or
- ~~(D)~~ **(D)** tuberculosis;

- (2) a Class B felony if:

- (A) the person knew or recklessly failed to know that the person was infected with hepatitis B **or hepatitis C** and the offense results in the transmission of hepatitis B **or hepatitis C** to the other person; or

- (B) the person knew or recklessly failed to know that the person was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

- (3) a Class A felony if:

- (A) the person knew or recklessly failed to know that the person was infected with HIV; and

- (B) the offense results in the transmission of HIV to the other person.



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1       SECTION 4. [EFFECTIVE JULY 1, 2001] **This act applies only**  
2       **to crimes committed after June 30, 2001.**

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